

Transcript of Proceedings
April 16, 2004

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U.S. DISTRICT COURT
CHARLOTTESVILLE
VIRGINIA
Page 1

1 IN THE UNITED STATES DISTRICT COURT 2004 AUG 31 P 4 13
2 FOR THE WESTERN DISTRICT OF VIRGINIA

3 CHARLOTTESVILLE DIVISION

4

5 UNITED STATES OF AMERICA,)

6 v.) CASE NO.

7 JAMES DANIEL BRAY,) 3:02-CR-00106

8 Defendant.)

9

10

11 TRANSCRIPT OF PROCEEDINGS

12 Charlottesville, Virginia

13 Friday, April 16, 2004

14 9:32 a.m.

15 Pages 1 - 73

16 Reported by: Jennifer L. Ziegenfuss, CCR

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A P P E A R A N C E S

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P R O C E E D I N G S

2 THE COURT: Good morning. Ready to call
3 the jury?

4 MS. WALDRON: Yes, Your Honor.

5 MR. WILDER: Yes, Your Honor.

6 (Jury entered the courtroom at 9:37 a.m.)

7 THE CLERK: 3:02-CR-000106, United States
8 of America versus James Daniel Bray, defendant number
9 one.

10 THE COURT: Is the defendant ready?

11 MR. WILDER: Yes, Your Honor.

12 THE COURT: All right. The Government will
13 make its closing argument.

14 (Audiotape played.)

15 MS. WALDRON: Ladies and gentlemen, that is
16 the voice of a predator. There are different kinds
17 of predators, and they use different means. But what
18 they have in common is that they use whatever means
19 they're good at, whatever means are going to work to
20 get their prey. The defendant, James Bray, is a
21 predator, and he used the means that he was good at,
22 the means that would work with these two girls. And
23 he tailored them to the girls, to the girls'
24 personalities, to the girls' vulnerabilities. He
25 tailored them in a way that would work to capture

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1 that prey.

2 He had many methods. With Jessica, it was
3 sneaking out of the house, rebellion, giving her Jack
4 Daniels, giving her marijuana. It was breaking away
5 the rules -- breaking the rules, running away to
6 Florida until she was 18. It was having children,
7 Max, Alex, Jessie, and Harry Dick Bray. It's
8 flattery. It's control. It's insults. It's "I love
9 you." It's demands, and it's escalating sexual
10 content, sexual talk, sexual demands. The defendant
11 may have used all of these methods in a single day.

12 Let's take a day in the life, February 3rd,
13 2002, 1:18 in the morning, to Seriously Precious:
14 "You sure take a lot for granted. You've let me and
15 Danielle down. I don't trust you anymore, and if you
16 think I will love you while you fuck me over, you're
17 just a stupid fool." And it goes on: "Pam Junior,
18 let's see what happens."

19 And as you'll see in AOL4B, Number 055,
20 there's a discussion of something defendant talked
21 about on the stand, how he didn't like her hanging
22 out with certain people. He's exercising his control
23 there. A little later, early in the morning,
24 February 3rd, Dickyfus to Seriously Precious: "I'm
25 wrong to cuss. I'm wrong to threaten. I should just

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1 leave you alone. Obviously, you don't think that I
2 will. If you would have believed it, you would've
3 never done what you've been doing. You've taken me
4 and our most powerful and precious love for granted,
5 the strongest love I have ever seen. I don't think
6 it will ever be the same. Damn you for that. Damn
7 you for hurting us. Damn you for killing our true
8 love. Damn you, Jessica. I just don't care anymore.
9 Believe it or not, that's honestly what I feel."

10 Still February 3rd, 2:34 in the afternoon:
11 "Dear Seriously Precious, I am madly in love with
12 you. I have been in love with you forever. You have
13 always been in my heart. Your love, your kindness,
14 your loyalty, you've always been with me, my dearest
15 love. You are the lady of my dreams." And it goes
16 on: "Signed, I love you. Together, we are one.
17 Together we will build a family and make our every
18 dream come true, E. B.," which Jessica said was Eager
19 Beaver, "24/7 and soon, I hope."

20 Still 3rd February, 14:41, this was 14:34,
21 this one is not to Jessica. It's to Danielle,
22 Harleygirl016 at AOL: "You are beautiful, a
23 remarkable young lady that I'm proud to know. Over
24 the last six months, I've had the chance to see you
25 grow and watch you live. Danielle, you can set the

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1 world on fire. I've never seen anyone like you. I
2 want to thank you for all your help and love that
3 you've given me. I don't know what would have
4 happened without you. I think that it'll be okay
5 from here on out. A week to think is good. A lot of
6 that time thinking has been of you and your sweet,
7 sweet heart and that smile. I want to say thank you
8 and that I love you." You'll notice different
9 methods for these different girls.

10 Then we're back to Jessica 14:53, "Subject:
11 All backed up for your love, a song of horny desires
12 for you. Hell, yeah, it's true. I'm backed up for
13 you. My balls are blue. I'm backed up for you. I
14 need your loving. I'm backed up for you." And it
15 goes on: "Signed, A song of horny desire for Jessica
16 Christine Spivey, a.k.a., Mrs. Bray, mother of Max."

17 Later, 15:57: "Check this scribbling out
18 in here, a large efficiency, \$480. I'm trying to
19 keep in walking distance from your love," et cetera.
20 Meanwhile, later that night, using instant messaging,
21 instant messages, 8:36, a refrain of that earlier
22 song: "I'm backed up for you. My balls are blue
23 because of you. SP14, I can tell. Dickyfus, you
24 want me to get a place very close to where you live?"
25 And then a few minutes later: "Okay, I will be

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1 close, close enough for you to sneak out so we can
2 screw constantly. Jessica, it's not screwing. It's
3 making love. Dickyfus, would you like me to screw
4 you constantly?" That's not all, of course, from
5 that day, instant messaging, as you'll see in Exhibit
6 A.

7 So that's just one day. Those are some of
8 the methods that the predator, James Bray, used in
9 just one day. Now, ladies and gentlemen, we did not
10 ask the witnesses to read every piece of evidence
11 that we're showing. And we did not show every piece
12 of evidence that was admitted, not by a long shot.
13 You'll have all this evidence in the jury room, and
14 you can read it. And you can see more of the
15 methods, the methods of control, the methods of
16 enticement and persuasion that Mr. Bray used with
17 Jessica and Danielle. And you've already seen it.
18 If you can stomach it in the jury room, you'll see
19 more. You'll be able to read additional
20 communications, and you'll see this sexual content,
21 this escalating graphic sexual content, pulling back
22 when it's too much and replacing it with talk of love
23 and children and marriage. But you will see that
24 sexual content. And I apologize for repeating some
25 of this content, and I apologize that we have had to

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1 show you and had you read and listen to this type of
2 vile material. But ladies and gentlemen of the jury,
3 these are not our words. These are the defendant's
4 words. These are his methods.

5 And while he may sometimes discuss
6 schoolwork or poetry or who Jessica should or
7 shouldn't hang out with, the next moment, he's
8 telling her to put a candle inside of herself and
9 save it so he can melt it on her, as you'll see on
10 February 11, Exhibit L434. And if you can stand to
11 read the screen shot starting at P299, you'll see
12 exactly, exactly what the defendant was planning to
13 do with Jessica when he met -- planned to meet her on
14 February 15. And if you can even stand to read
15 through to 399, the defendant's intent, his use of
16 these communications is clear.

17 In fact, you can pretty much close your
18 eyes and open a page of these exhibits, P, Exhibit P,
19 see what we've found, P329: "What are you going to
20 do to me?" he writes. "Hello. Everything, I'm going
21 to suck you dry, oh, baby," February 12. And Jessica
22 didn't -- she said she didn't have a big reaction to
23 this graphic sexual content. She said she was used
24 to it. Well, that's what her teacher taught her.
25 And when he was in person with her, in addition to

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1 giving her liquor and marijuana, she said he showed
2 her pictures of graphic pornography on his computer.
3 He showed her a picture of a person in a sexual act
4 with a horse, she recalled. How could she forget?

5 And, yes, Jessica thought she loved him,
6 and she communicated with him, too. And you will
7 see, she had sexual banter with him, and she called
8 him. And what does that show? That shows that he
9 was successful. He was a successful predator.

10 The defendant used different methods with
11 Danielle, more subtle, sweeter. She was very adamant
12 on the stand. He was so sweet to her. He was so
13 good to her. He taught her so much, poetry, nothing
14 inappropriate in the first physical contact. She
15 said him pushing her against the wall when his
16 daughters left the room to kiss her, that was
17 passionate. So, no, the defendant never forced her
18 to do anything. That would have scared away his
19 prey. Instead, he held out promises, sweets, if you
20 will, take her step by step because not all predators
21 use brute force, kissing her, rubbing her legs,
22 telling her he loved her, telling her he was blown
23 away by her, what a special girl, making her feel
24 comfortable and needed and loved. And then he calls
25 her on the school bus, January 24, asks her to pick

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1 him up from jail.

2 And by then, he knew he had her. His girls
3 were gone. They had privacy. They had time. And he
4 had a 16-year-old who thought he was her best friend,
5 so he intensified his campaign, his pursuit. And she
6 testified that in this time period, they engaged in
7 sexual activity. They even started to have sexual
8 intercourse once and then she said something like,
9 "He got off and it stopped." And as he would later
10 write on March 9, Exhibit 22, "Our three weeks
11 together was fantastic, what I felt having you,
12 breaking you in." And he admitted to writing this.
13 But ladies and gentlemen, he didn't want to let go of
14 Jessica yet. So for awhile, he talked about the
15 three of them being family, the three of them
16 together, his sweetheart and his woman. But as he
17 felt Jessica slipping away, slipping out of his
18 grasp, Danielle became the primary target: "Ray's my
19 name and you're my lamb chop. I like you sunny side
20 up, toes in the air. I like you big and soft." He
21 writes her a letter, Exhibit 25, about her eyes: "I
22 know how damn big they get while watching me ravish
23 you, oh, yeah. I know what you're thinking, hell
24 yeah, my pups, and watching me love on you, which is
25 really what I think you like doing most, watching me

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1 love you. I wish I could kiss your eyes right now."

2 Danielle and Jessica both testified. And
3 they both told you that they had testified before and
4 they had lied. They had lied under oath before. And
5 Danielle told you that she was protecting the
6 defendant even as recently as last week. You've seen
7 these girls. You've seen their vulnerability.

8 You've seen what they were like at 18 and 19 on the
9 stand, and you've seen what they were like at 16 and
10 17. And both girls explained why they lied before.
11 They said they were protecting the defendant. They
12 loved him. They thought that he loved them.
13 Danielle said she would have done anything for him.
14 She said that she was still guilty, and she didn't
15 want to testify.

16 Well, where did these two girls get in
17 their minds that it was their job to protect the
18 defendant, that it was their job as a 16-year-old,
19 17-year-old to protect this 46-year-old man? Where
20 did they get in their heads that that was their
21 responsibility, their fault? Well, you've seen him.
22 You've seen the direction, the control exerted by the
23 defendant. Exhibit 9 to Jessica Spivey, that's a
24 letter from March 29th: "Let me give you some sample
25 questions or answers. If your folks, police, or

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1 counselors ask you -- Courtin, my lawyer, is
2 different; you know exactly how to handle that --
3 have you been in contact with Mr. Bray? No, not
4 since November 15th. How do you feel about that?
5 What are your feelings for him? I love him, nothing
6 else. Our relationship is private. I will not
7 discuss him with you. We've never had sex. I'm a
8 virgin and will be until my wedding night. I have a
9 code for living. Baby, I'll be out of jail soon. Be
10 smart. Believe in our love."

11 Exhibit 8, March 13, to Jessica, Jessica
12 Bray, here: "How can you rescue me if you are in
13 jail? And you'd fucking better rescue me." You
14 heard him on the phone telling Danielle to tell
15 Jessica, "When I tell her to say something, she
16 should say that," telling Danielle what to tell
17 Jessica to tell the judge, saying, "Write letters
18 immediately. You tell Jessica to tell the judge that
19 her mother set this up," writing Danielle in March,
20 "Listen to me. Listen very carefully. Think of what
21 I've already taught you. You are my finest pupil.
22 Prove something to me. Throw away my letters." We
23 saw that all over: "Throw away my letters. Burn my
24 letters. Prove something to me."

25 Exhibit 58, March 23rd to Danielle, this is

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1 the one where he's telling Danielle to go beat
2 Jessica's brains out if she deceives him. This is
3 the one where he says, "I'm going to consider you as
4 a friend if you have a code for living and how you
5 conduct yourself. Do you fucking understand that? I
6 guess not." Yes, sometimes he's talking about Lydia.
7 Sometimes he's talking about how Danielle was honest
8 with the police and told them she lent \$2,000.
9 Sometimes he's talking about how the girls aren't
10 writing him enough. And remember where he berates
11 her in another letter for not picking up the mail
12 quick enough so that the police couldn't find it?
13 And this one, after telling her to tell Jessica to,
14 in his words, "Eat shit and die," writes, "P.S. I
15 love you, heifer. See you next when I get out, not
16 ten years from now."

17 Exhibit 59: "You snitched," to Danielle,
18 "You snitched. And you don't do that to someone you
19 love."

20 You know what, ladies and gentlemen? The
21 fact that these girls went to such lengths two years
22 ago to protect the defendant, the fact that it took
23 Danielle so long to finally say what had happened
24 with the defendant, that shows, that proves the kind
25 of control that he was exerting over them, the kind

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1 of control that is inextricably bound with the way
2 that he was using these communications to entice them
3 to engage in sexual activity, to keep them on the
4 hook, to keep Danielle on the hook while he was in
5 jail so she'd be waiting for him when he gets out.

6 So let's talk a bit more about the elements
7 of this crime, which we have proven beyond a
8 reasonable doubt. The judge instructed you yesterday
9 on these elements. Remember the key. Of course, he
10 used these facilities of interstate commerce, the
11 mail, piles of letters, e-mail, instant messaging,
12 the telephone, the telephone to hook up to the
13 internet, and the internet. But the question before
14 you is, how did he use them? How did he use them
15 because he used them to persuade or to induce or to
16 cause or to seduce, or those other instructions that
17 the judge gave you. He used them to persuade these
18 girls to engage in sexual activity or to attempt and
19 to try quite hard at that. And as the Court
20 instructed you, it is illegal under Virginia law for
21 an adult to engage in even consensual sexual activity
22 with a minor between 15 and 18 years of age. So
23 focus is on the way these communications were used
24 and the defendant's intent.

25 And as you were also instructed, the

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1 Government does not need to prove that he
2 successfully persuaded anyone to engage in sexual
3 activity or that sexual activity actually occurred,
4 but we did prove it. We did prove it. And that
5 shows the defendant's intent in all these
6 communications. And what it does is, it takes a
7 communication that is not on its face sexual, and it
8 allows you to take all of the evidence that you have
9 before you and find, even based on one e-mail, that
10 we have proven our case beyond a reasonable doubt.

11 February 3rd, AOL4B, 001, defendant to
12 Jessica: "After an amazing ordeal, I'm here, Room
13 223. I love you." Ladies and gentlemen, you can
14 take this communication and you can use the other
15 evidence before you to find that the defendant's
16 intent in writing this communication is to persuade
17 her to have sexual activity with him. That's what
18 they were setting up. That's what they were planning
19 for February 15. So you can base your finding, based
20 on all the evidence, on a communication in the time
21 period alleged in the indictment that on its face
22 might not be, obviously, an enticement.

23 Or you can take something which is more
24 obvious, E292: "You're the future queen of internet
25 porn. Where are we going to go? Anywhere I can put

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1 my dick on you." And you saw, ladies and gentlemen,
2 you saw communication after communication of this
3 nature. You saw that with Jessica.

4 How about a valentine, P135: "You'll sleep
5 good tomorrow with part of me deep in your belly."
6 T142: "And feel it running out of you the next
7 week." You may even find, just looking at the fall
8 2001 time period with Jessica, that enticement is
9 proven by those phone calls and those e-mails,
10 talking every day and setting up plans to meet. And
11 when they were meeting, ladies and gentlemen, they
12 were engaging in sexual activity.

13 And there were e-mails in the fall. Now,
14 these were not yet captured by the Spiveys, so you
15 don't have this kind of a detailed record of the
16 instant messages or e-mails that were going on then.
17 And when Mr. Cokely testified from America Online, he
18 said that he -- that these were no longer saved on
19 the AOL servers, so AOL provided, pursuant to the
20 search warrant, a more recent time period of e-mails.

21 But some of these were found on the
22 defendant's own computer. Exhibit 34, to Danielle at
23 her Softballer016 -- and this is from September 4,
24 2001. And at this point in the relationships, he's
25 talking about Jessica: "Please kiss her sweet ear

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1 and send her love. Thanks, Danielle. Please make
2 sure baby gets this message. Please keep this to
3 yourself, James." By the way, this is from the
4 defendant's fourth e-mail address,
5 support@amerinfoserve.com.

6 And there are other e-mails on the
7 defendant's computer from the fall time period,
8 e-mails from Danielle where she says, "I love you,
9 too." And this is October 24, Exhibit 39, and the
10 defendant then forwards it to himself, forwards it to
11 support@amerinfoserve. It had originally been sent
12 to his AISharley address. The next day, September
13 25, Exhibit 40: "Hey, you." This is what Jessica
14 testified about and what Detective Dean testified
15 that he found on the defendant's computer. Jessica
16 writes the defendant, "Hi. This is Chris. I made a
17 fake e-mail address on the computer at school, love
18 you."

19 And ladies and gentlemen, during Detective
20 Dean's testimony, other e-mails found on the computer
21 during this time period were introduced: 35, from
22 Danielle, "Loves, hugs, kisses;" 36, from Jessica, "I
23 miss you so much. I hope you get my message tonight.
24 Love you, Chris;" 37. So this shows these
25 communications, this web of communications are even

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1 occurring in the fall of 2001 with both girls.

2 What else is found on the defendant's
3 computer? Documents, saved, composed, Word Perfect,
4 other formats, documents about Jessica that she
5 remembers getting. For example, Exhibit 46, Jessica
6 testified she remembered getting this in the fall.
7 Now, this alone would not support a finding of the
8 use of an interstate facility because she doesn't
9 remember the format she got it in, but it sure shows
10 the defendant's intent. It sure shows that he's the
11 one communicating with Jessica throughout this whole
12 time period in this graphic sexual manner. This is
13 the communication where Jessica says they had
14 actually begun to have sexual intercourse, and they
15 stopped. She asked him to stop. And that was the
16 time she brought a condom. This was in the fall of
17 2001. She brought a condom, and he didn't want
18 to wear a condom.

19 So he writes her, and Detective Dean
20 testified that the creation date of this document on
21 the defendant's computer was September 29, and it's
22 dated here, September 28th, 2001: "Believe in you
23 and me." And remember this very graphic content:
24 "Let me explain this another way because I'm just not
25 sure that you understand. You give yourself to me."

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1 Women give themselves to their men. You don't worry
2 about me wearing a rubber or if your legs get a
3 little sore or if you need to piss, bleed, die, or
4 whatever else may come to mind."

5 He was already writing this type of
6 communication, ladies and gentlemen, in the fall of
7 2001. He was writing to a 16-year-old at that time,
8 Jessica. Her name is in here everywhere, signed, "I
9 love you, James." Defendant testified he had never
10 seen this document on his computer. He, in fact,
11 suggested that Mrs. Spivey had written it.

12 There were other documents here on the
13 defendant's computer, ladies and gentlemen. We
14 didn't show you them all. We didn't read you them
15 all. But they are in evidence, and you can review
16 them. Exhibit 45, to Precious, containing the line,
17 "Jessica, we've been married since Fredericksburg.
18 It is amazing. It really feels like that to me."
19 And you remember this motorcycle trip to
20 Fredericksburg in July of 2001, other documents, one
21 from her, also found on a floppy disk, Number 43,
22 again, on the defendant's computer. Number 44, to
23 Precious: "Hey, baby," on the defendant's computer.
24 Ladies and gentlemen, let's not forget this
25 saved instant messaging session found on the

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1 defendant's computer, Exhibit 48. It's hard to
2 forget the contents of this. He is instructing her
3 on sending pictures to him, and then he's trying to
4 get her to take extremely graphic sexual pictures.
5 Now, she didn't do it. She said she was too
6 embarrassed to do that, but he sure tried. He sure
7 tried to use this instant messaging that was saved on
8 his computer in this other format. He sure tried to
9 get her to take that kind of picture. I'm sure you
10 remember this content, ladies and gentlemen.

11 And what else is significant about this is
12 that it absolutely corroborates what Jessica was
13 telling you. She said, while she was writing this,
14 having this instant messaging with the defendant, she
15 did send him some pictures of herself. She
16 remembered sending these pictures. The defendant --
17 once she identified JS14, well, the defendant even
18 admitted that he had this on his computer. And he
19 said, yes, that was a picture of Jessica in her first
20 bra. Well, how would defendant know it's her first
21 bra if their relationship was as he described it?
22 Why would he have this picture on his computer? And
23 more importantly, Detective Dean testified that this
24 document was created on the 27th of January.

25 Then he testified about the images found on

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1 the defendant's computer. These images in Exhibits
2 49 through 49S were found on the hard drive. And he
3 testified that, yes, these three images that Jessica
4 said she sent the defendant during this instant
5 messaging, these three images on Exhibit 49H were
6 found on the defendant's computer. And guess what,
7 ladies and gentlemen? As you recall, Detective Dean
8 testified that these images were created on his hard
9 drive on January 27th. It all fits together, ladies
10 and gentlemen. It corroborates Jessica's testimony.
11 It shows you the way the defendant was using these
12 communications to entice Jessica.

13 Defendant also admitted to having the
14 picture of Jessica in her thong on his computer.
15 Well, he pretty much had to, didn't he, because the
16 police came in and saw this on his computer. Doesn't
17 that raise a question, ladies and gentlemen, an
18 interesting question? Jessica was only there for two
19 minutes and he didn't know she was coming, yet
20 somehow he had time and wanted to pull this sexual
21 picture of her in a thong up on his computer, and
22 that was while she was in the bathroom stripping all
23 her clothes off, unbeknownst to him. Those clothes
24 then magically appeared in the bedroom when the
25 police got there and were seen on the floor by the

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1 police. Ladies and gentlemen, defendant was quite
2 literally caught with his pants down. But, of
3 course, he attempted to explain that away, too,
4 saying that the police had pulled his shorts down.

5 Another thing I would like to highlight
6 about communications to Jessica has to do with the
7 testimony of Scott Polk because, although the
8 government is only required to show the use of these
9 interstate facilities, facilities of interstate
10 commerce, such as the internet or the telephone, we
11 did, in fact, show that these communications also
12 travelled through another state. We showed that they
13 went through Slidell, Louisiana. Scott Polk
14 testified that his service, myownemail.com, which is
15 where Jessica got her
16 seriouslyprecious@youreadork.com e-mail address,
17 every communication to or from that travelled through
18 Slidell, Louisiana.

19 And let's look at some of those
20 communications, ladies and gentlemen. Exhibit 4B --
21 you'll have them all -- 9 February 2002, "Dreams,"
22 defendant writes -- excuse me, again -- "of me
23 fucking her ass. I want to marry you. I want you to
24 have Max, Alex, and baby Jessica." By the way,
25 ladies and gentlemen, do you remember Exhibit 9, part

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1 of a letter that defendant admits writing? Well,
2 what do you know? "I am your fiance. You are mine.
3 We will be married forever and have four kids, Max,
4 Alex, Jessie" -- there's a fourth one here -- "Harry
5 Dick Bray, truly madly, deeply."

6 While we're talking about the youreadork
7 service, you may recall that Danielle also used this
8 service. She chose a different domain name, as it's
9 called. She chose toosexyforyou.com. Mr. Polk
10 recognized that. He said, "That's one of our domain
11 names. We have had that domain name at myownemail
12 since 1997. That means communications to
13 toosexyforyou.com passed through our servers in
14 Slidell, Louisiana." And Danielle chose
15 harleybitchforlife@toosexyforyou.com.

16 You'll find those communications different,
17 very different in tone from some to Jessica in this
18 time period. You'll find them at AOL4B. He writes
19 her, for example, on 13 February, "Awesome, blown
20 away, star struck, all of those words describe what I
21 feel since the first day that I laid eyes on you,
22 darling. And it goes on: "Danielle Nicole, a name
23 that makes my heart pound. I love you, baby, and I
24 always will." Another simple one, 12 February,
25 saying simply, "I love you." Those are his methods

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1 with Danielle at that time.

2 I'd like to spend just a few minutes
3 talking about the drug charges against the defendant,
4 supported, also, by the testimony of Jessica Spivey
5 and the numerous other witnesses that you saw. Let's
6 first take February 15, the possession with intent to
7 distribute charge. How do you know that he possessed
8 it? Police found it. They found it in his drawer.
9 They found it. They passed it securely through all
10 those officers that came in here, and they tested it.
11 You heard Corey Myer, and it tested positive; it was
12 marijuana.

13 How do you know that defendant intended to
14 distribute it? Well, first, Jessica testified that
15 he offered it to her. She refused that time. She
16 wasn't there long, but he offered it to her. And you
17 also know, as the judge told you, you are allowed to
18 take certain other uncharged acts into your
19 consideration, not to prove that he did the charged
20 act, but to show his knowledge or his intent. So you
21 can take the testimony about the Fredericksburg
22 motorcycle ride and smoking pot together on that
23 occasion, and you can use it to determine or
24 influence your determination that the defendant, when
25 he was found possessing marijuana on the 15th of

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1 February, had intended to distribute it to Jessica.
2 And you heard about other times they smoked pot
3 together. And one of those other times is charged,
4 charged as distribution of marijuana on or about
5 November 10.

6 As you were instructed, you are not
7 required to find that this happened on an exact date.
8 The question for you is whether you find that it
9 happened and that it happened reasonably near -- at a
10 time period reasonably near the date charged in the
11 indictment. No, Jessica could not remember exact
12 dates; she could not. But then she was able -- she
13 did testify she did remember that, in this time
14 period, fall 2001, she saw the defendant at the
15 football games. She would see him. She would
16 pretend she was going to the football games. She
17 would sneak off. She would see him in his hotel
18 room. She said he gave her pot.

19 And then when asked about a specific
20 occasion, she said, yes, she went to football games.
21 I believe -- your recollection controls, your
22 recollection of the testimony -- but I believe she
23 testified that she went to drop her sister off at a
24 football game in the fall, and instead -- and then
25 she went over to the defendant's hotel room and drank

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1 and smoked pot. And when asked whether she brought
2 that pot, she said no.

3 So ladies and gentlemen, you may use this
4 and other evidence such as, by the way, Number 48
5 where the defendant instant messages her that he's
6 smoking a doobie. You may use this and other
7 evidence to find that he knew the contents of what he
8 possessed, that he intended to distribute it on the
9 15th of February. And you have evidence and we have
10 proven that he also distributed marijuana to Jessica
11 Spivey in the fall of 2001, reasonably near the date
12 listed in the indictment as on or about November 10.

13 In the fall, defendant was also laying the
14 groundwork for the enticement of Danielle. There
15 were e-mails on his computer on that and testimony on
16 that. And then his use of these facilities of
17 interstate commerce intensified in January, starting
18 around the 24th. And again, the question is how he
19 used these communications. You've seen these later
20 e-mails in January and February to Danielle. You've
21 seen -- in AOL Exhibits 2 through 7, you've seen that
22 Danielle's e-mail addresses, some of them, were on
23 his buddy lists. And Don Cokely told you that that's
24 a convenient way for a user to find someone when
25 they're online and communicate with them in ways such

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1 as instant messaging. And you've heard the
2 defendant's own voice, February 25th 2002, in a
3 telephone call to Danielle -- this was a three-way
4 call through his mother -- where he tells her, among
5 other things, he's only going to be living three
6 blocks from her when he gets out.

7 And there are the letters, all these
8 letters. March 9, he wishes he wouldn't have worn
9 her out so damn quick and had some more fun. He'll
10 write her every day. Her time will come. Some
11 letters entice with talks of children, sometimes
12 using the same names he used with Jessica, such as
13 Max. And sometimes this talk of children is mixed
14 with --

15 THE COURT: Excuse me. I just want to take
16 a five-minute recess.

17 (The jury left the courtroom at 10:19 a.m.)

18 THE COURT: The last gentleman sitting
19 there has been coughing. He has told the marshall
20 he's sick to his stomach. Since we have two
21 alternates, I would like to release him. So what is
22 his name?

23 MS. WALDRON: It begins with a C, I
24 believe.

25 THE CLERK: Edward Carter.

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1 THE COURT: Carter. Okay. I am going to
2 release Mr. Carter.

3 Why don't we take about a five-minute
4 break.

5 (Recess, 10:20 a.m. to 10:26 a.m.)

6 THE COURT: All right. Call the jury back.

7 (Jury entered the courtroom at 10:26 a.m.)

8 THE COURT: All right. You may proceed.

9 MS. WALDRON: Ladies and gentlemen, we were
10 talking about the way that the defendant used these
11 communications and, in the case of Danielle, used the
12 United States mail to entice or persuade her to
13 engage in sexual activity, to keep her on the hook so
14 that she was waiting for him when he got out.

15 Exhibit 25, where he talks about her eyes,
16 talked about other mail, other letters.

17 Unfortunately, we need to talk about this birthday
18 letter, the birthday letter that the defendant
19 described in a phone call that you heard as one of
20 the best things he has ever done in his life and
21 described in later letters as hot. He said it was
22 his story, his story of love, and he emphasized it
23 was a story. Yes, it's written as a story. It's not
24 a documentary or journalism. But it's not a story
25 written in a diary and tucked away. It's not a story

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1 that he wrote in a letter and kept in his jail cell.
2 It's a story he wrote, a 17-page sexually graphic
3 story that he wrote and put in the mail and sent to a
4 16-year-old for her 17th birthday. This is a letter
5 that he's using to entice her and persuade her and
6 get her and keep her on the hook so he can have sex
7 with her when he gets out of jail. This is an
8 enticement.

9 Ladies and gentlemen, it goes from "Happy
10 birthday, darling" to graphic descriptions of all
11 kinds of sex, vampire sex, Danielle growing a penis,
12 oral sex. You heard Officer -- Sergeant Sandridge
13 when she was required to read some of it on the
14 stand. You heard that language, ladies and
15 gentlemen, and it goes on for 17 pages, and it was
16 put in the mail to Danielle. And you know how it
17 ends: "Happy birthday, my love. I will never be
18 away from you, again. And soon I will be with you
19 forever."

20 And then he writes her another letter about
21 this birthday story. And this letter, Exhibit 30,
22 was seized by Sergeant Sandridge, so it doesn't show
23 that it went, actually, through the mail, no. But it
24 sure as heck shows his intent. He writes, "Danielle,
25 I'm coming home. I need my baby, 24/7. Limber up

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1 because I'm backed up to fucking China. Tell my pups
2 I got a collar for them. Get ready. I love you, J."

3 Ladies and gentlemen, there is overwhelming
4 evidence that the defendant used the mail, used the
5 telephone, used the internet, used every means of
6 communication he could use to get to these girls,
7 Jessica and Danielle, to get to these minors, to get
8 them to have sex with him. And whether he actually
9 had sex with them or not, there is overwhelming
10 evidence that he was using these communications to
11 get them on the hook, that his intent, his single
12 minded pursuit of these girls, whether he's talking
13 about children, poetry, or anal sex, that his purpose
14 is to get these girls to engage in illegal sex with
15 him. And we ask you to find him guilty.

16 MR. WILDER: Good morning, ladies and
17 gentlemen. It has been a long week; I know. And I'm
18 glad that you've been paying attention and watching
19 everything that has been going on.

20 I'm struck by a few things at the outset.
21 You may recall, at the very beginning of this case, I
22 asked you all how you would feel about an older man
23 having an emotional relationship of any sort with a
24 younger woman. And everybody recoiled a little bit
25 and was uncomfortable with it, but every one of you

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1 promised that you could put that aside and judge the
2 case based solely on the evidence. And I'm sure that
3 you have been doing that and are going to continue
4 doing that.

5 The issue in this case, the relationship
6 that Mr. Bray had with Jessica Spivey and Danielle
7 Lamb, is not the ordinary kind that most society
8 accepts. And because of that, we've recoiled, and we
9 seek to find evil in it. We seek to find predatory
10 behavior in it. We can't believe that or are not
11 willing to accept that there could be a loving,
12 emotional relationship between an older man that
13 looked like Mr. Bray did at the time and these
14 younger women without there being some sort of bad,
15 evil activity on the part of Mr. Bray.

16 Ms. Waldron started off by calling him a
17 predator. I told you, at the beginning of the case,
18 you were going to see that there is no evidence that
19 Mr. Bray is sitting around trolling on the internet,
20 going to chat rooms, looking for minors to ensnare in
21 his evil web. There's no evidence of that. He met
22 both of these women because his daughters were
23 classmates. They brought them to the house, just
24 like I'm sure a number of your sons and daughters
25 have brought classmates and friends to meet you.

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1 That's how he met them. He had no -- didn't go out
2 and try to find them himself. And in fact, the
3 testimony is that, at least for some period of time,
4 they kept coming back to the house to see his
5 daughters and otherwise interact, and that was the
6 only time he was seeing them. He is not lurking in
7 his little spider's web, drawing tentacles out and
8 trying to capture these women. But that's just part
9 of how the Government has twisted every part of this
10 case, to try to re-characterize everything about it.

11 You've seen tons of documents, but these
12 are only a portion. And I'd ask you to go ahead and
13 look through anything you want. There are certainly
14 some sexually explicit communications in part, but
15 the overwhelming majority of the communications and
16 the documents provided are relatively standard
17 emotional, you know: "What are you doing in school?
18 I'm concerned about the people you're hanging out
19 with. You need to learn to deal with your parents
20 better."

21 But what the government wants to do, taking
22 their assumption that Mr. Bray is evil and that he
23 was trying to lure these minors into his web, they go
24 back and they re-characterize everything, even the
25 most innocent letter, communication, or phone call

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1 now becomes evil instead of -- it becomes, Oh, this
2 is his tool of doing it. This is how he treats this
3 person. You know, this is how he treats Jessica.
4 This is how he deals with Danielle.

5 I think we all understand, as human beings
6 with common sense, that people interact differently
7 with other people. How I would interact with one
8 person may be different from how I speak and how I
9 interact with another person. That's just normal.
10 But in the eyes of the U.S. attorney, that becomes a
11 tool. That shows deviousness on Mr. Bray's part.
12 And I ask you to reject that thinking and to look
13 carefully at what's going on here.

14 Mr. Bray got on the stand and testified
15 yesterday under no obligation to do so, but he wanted
16 to tell you in his own words his version of what was
17 going on. He testified that he was not using the
18 Dickyfus user name. And despite all the evidence
19 that's been brought in and all the experts that we
20 listen to, not a single one of those experts could
21 tell you, with 100 percent certainty, that Mr. Bray
22 wrote any of those Dickyfus messages that we looked
23 at. Not a single one can do that, not Mr. Cokely
24 from AOL, who agrees that, if you know the password,
25 anybody can use anybody else's AOL user name, not

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1 Mr. Dean.

2 And I thought it was especially important
3 that he testified that, when they looked at
4 Mr. Bray's computer, the passwords to the screen
5 names were cached on the computer, which means that
6 anybody with physical access to Mr. Bray's computer
7 can go on and send messages, receive messages using
8 any of the user names there. And you just don't know
9 who that person was. It's, frankly, just a function
10 of the medium, and that's why we have issues with
11 people, identity theft, and various things because
12 anybody with access to your passwords to the computer
13 can be you. And it's almost impossible to 100
14 percent prove who it is.

15 I thought it was interesting that nobody
16 was able to provide testimony that Mr. Bray had
17 exclusive access to his computer because that would
18 have been critical. If you could show that Mr. Bray
19 was the only person that could have gotten to the
20 computer at a given time, that might have helped, but
21 we didn't see that. In fact, there was testimony
22 that other people had access to Mr. Bray's computer.
23 His daughters, for example, at times, had access.
24 Anybody that was over at the house visiting his
25 daughters had access to the computer at times. And

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1 in fact, the undisputed testimony before you is that
2 Danielle Lamb had access to the computer even while
3 it was at the Super 8 Motel. Danielle Lamb was here
4 and was available to rebut that assertion by the
5 defendant. It was not, so it's uncontradicted
6 testimony that Ms. Lamb had access all the way to
7 February 15th to this computer.

8 I also want to make sure you keep track of
9 one point that Mr. Dean made with regard to file
10 creation dates. He testified that a file creation
11 date is the date that a file is first saved on the
12 computer or the date that it's moved. So if you save
13 it on the computer on one day, that gets a creation
14 date. If you move it from a folder to another
15 folder, it's got a new creation date. So you don't
16 know, by the creation date listed on some of the
17 Government's exhibits, when that document got on the
18 computer for the very first time. And especially in
19 conjunction with the fact that they can't ascertain
20 who had access to the computer, that evidence becomes
21 almost worthless. You just can't tell where any of
22 these messages are coming from or who's sending them.

23 I'm going to skip a little bit ahead
24 because I think it's consistent with the approach
25 that the Government has been taking in this case.

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1 You've got two counts of enticement and then what I
2 kind of call throwaway, tack-on charges of drug
3 distribution. And what the Government wants you to
4 do is take your dislike for Mr. Bray, based on this
5 relationship with the minors, and they want you to
6 use the prejudice and dislike you have for him, based
7 on that evidence, and gloss over the lack of evidence
8 on the drug charges.

9 And in particular, I thought it was
10 interesting that Ms. Waldron, referring to the
11 February 15 possession with intent -- she even told
12 you to do that. She told you -- and it's
13 permissible -- you are allowed to use the other facts
14 and circumstances in the case to affect your decision
15 as to whether he possessed with intent on that
16 particular day. But look what she asked you to use.
17 She asked you to look at the uncorroborated testimony
18 of Jessica Spivey. These are serious federal drug
19 charges, ladies and gentlemen, especially on November
20 10th. They are alleging that he's a drug dealer.
21 It's the same thing, that he distributes drugs.

22 And what's the evidence? We don't even
23 have marijuana to look at on the November 10th
24 incident. They have nothing. All they have is the
25 uncorroborated testimony of Jessica Spivey, who we

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1 already know has come into court on at least four
2 different occasions and lied. We don't know whether
3 she's telling the truth today or the other day or
4 not. We just don't know. And she's the only
5 evidence whatsoever that on some undisclosed date in
6 November that he distributed drugs to her. They
7 indicated the date on or about November 10th. On my
8 cross-examination, all she could come up with was, it
9 was sometime around the football game. So if the
10 standard football season for UVA is late August to
11 November, early December, maybe January if they got
12 to a bowl game that year, that's all you have. And I
13 would submit that you're not permitted to find the
14 defendant guilty beyond a reasonable doubt of
15 distributing drugs on or about November 10 when
16 that's the evidence you have.

17 Similarly, on the possession with intent on
18 February 15, in that case, at least there is what has
19 been testified to as being marijuana. So the
20 Government is looking a little better on that one.
21 But Mr. Bray has denied that the marijuana was his.
22 And for all we know, Jessica could have brought
23 marijuana with her when she came in. She testified
24 that, at least on one occasion, she brought marijuana
25 to Mr. Bray, so it's not outside the realm of

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1 possibility that she was the person that brought it
2 in. And in the hoopla of whatever happened with the
3 police within the next couple of minutes, she got it
4 out of her pockets.

5 The only evidence they have that that
6 marijuana was allegedly being used to distribute was,
7 again, Jessica Spivey's testimony. There was no
8 testimony from the police officers that the amount
9 was inconsistent with personal use. You'll see from
10 the lab analysis that it was less than a quarter of
11 an ounce, a very small amount. There were none of
12 the usual indicia of drug distribution, baggies,
13 other means of separating it out in order to
14 distribute it. There was none of that. All we have
15 is Jessica Spivey's testimony, and I would submit
16 that that's not sufficient to find him guilty beyond
17 a reasonable doubt of those charges.

18 And I hope you look at the marijuana
19 certificate from the lab. You'll see that it was
20 sent to the lab in July of 2003. Now, this is
21 something that was taken February 15, 2002, and they
22 don't send it to the lab for more than a year. And
23 you might ask yourself, what's the reason for that?
24 And we don't know. I would submit to you that it's
25 kind of part and parcel of the Government, who was so

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1 eager to get whatever they could on Mr. Bray on the
2 enticement charges, and they got worried about them.
3 So we've got to tack on stuff because we're going to
4 get Mr. Bray any way we can. And if we don't have a
5 good marijuana charge on him, we're going to add it
6 onto something else because we know the jury is going
7 to hate him, based on the other charges. So I'll ask
8 you to look at that very carefully.

9 With regard to the first two charges, what
10 he's charged with is using the mail or interstate
11 means of communication to entice a minor to engage in
12 any sexual activity that would be a crime under
13 18.2-371. Now, you've got an instruction on
14 18.2-371, and I want you to look at it because it
15 actually describes sexual intercourse. That's the
16 exact wording of the statute. And I would submit to
17 you that that's not necessarily the same thing as
18 sexual activity. I think our common sense
19 understanding of the terms is that sexual activity is
20 a broader category of behaviors than sexual
21 intercourse. But you need to find that he attempted
22 or, in fact, enticed these minors to engage in sexual
23 intercourse in order to find him guilty.

24 And we've talked a little bit about the
25 Dickyfus messages. Let's talk a little bit about the

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1 letters to Danielle Lamb after Mr. Bray was in jail.
2 And I would submit to you that those letters were
3 worthless. You can look at them. Just look in there
4 and find something that says, "I want to have sex
5 with you," with a time reasonably ascertainable. You
6 won't find it. You'll find lots of communications
7 with her.

8 Remember, this is a man who was in jail,
9 who was in the hole. He was surrounded by murderers
10 and rapists on either side. He was a pretty
11 desperate guy, no question about it. And he had lost
12 all control over what was going on in his life. He
13 had lost his children. He's in jail. He's got no
14 family in the area. He's dependent on what friends
15 he has. Now, in this case, his friends were
16 underage, but he's not at fault, necessarily, for
17 that. He has to reach out to the only people he has
18 for basic things like communication, just to have
19 someone to talk with, to do routine errands, to get
20 things to and from his attorneys, to find out what
21 they were doing with their day.

22 And you can imagine, when your only means
23 of communication is now limited to writing and you're
24 getting letters back -- because we only saw just a
25 tiny portion of the communications. The Government

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1 obviously picked the ones that have salacious
2 language in it because they want to skew your
3 perception of the whole relationship. But everybody
4 has admitted that there were tons of letters back and
5 forth with perfectly humdrum, normal communications.

6 Mr. Bray -- and he has testified that he
7 was hearing from Danielle Lamb, that she was hanging
8 out with people that were known to have drug
9 problems, people that you wouldn't want your sons and
10 daughters hanging out with. And what can he do,
11 sitting in jail, other than tell them, "You need to
12 do what I'm telling you"?

13 The way you respond in those situations is
14 not necessarily how you would if you were able to
15 have face-to-face, more reasoned communications. And
16 we have not denied that his language at times is not
17 what we would consider appropriate, frankly, for any
18 communications, not just one between an older person
19 and a younger person. But try to keep it in the
20 whole context of what was going on. If all you can
21 do is write, if your only means of showing how
22 impassioned you are about a subject is through the
23 written word, you might end up using bad language and
24 underlining and being abrupt and being pretty crude
25 sometimes to try to make your point across because

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1 his control was limited. He essentially had no
2 control over these women. They've testified, if you
3 believe everything they said, that he never did
4 anything to them that they didn't want to do, that
5 when he asked them -- and this is if you believe
6 everything they said on the stand. If he asked them
7 to do something that they didn't want to do, they
8 said no. This was not a man that was controlling
9 them in any way.

10 And when you get down to it, the only
11 testimony we have, the only evidence that any actual
12 sexual activity took place is from the girls
13 themselves, who are known perjurers. They're not
14 going to be charged for it, almost certainly, but
15 they came into court and admitted Jessica -- that she
16 perjured herself in at least four different courts.
17 Danielle Lamb, if you believe her testimony during
18 this proceeding, perjured herself in the
19 Charlottesville Circuit Court and perjured herself --
20 it wouldn't actually be perjury, but she lied on an
21 affidavit that was submitted to this Court. That's
22 not -- those witnesses don't have the kind of
23 credibility in this case that you need in order to
24 find Mr. Bray guilty beyond a reasonable doubt.
25 And what I thought was interesting is, they

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1 talked about how Mr. Bray told these girls at various
2 times how to testify in court. And we've heard some
3 communications and seen some letters where he tells
4 them, "You need to say this to the judge or this to
5 the Court." And that's been characterized by the
6 Government as him telling them to lie. I made a
7 careful note when Ms. Spivey was testifying because
8 she testified, specifically, that Mr. Bray never
9 instructed them to lie. And that's important
10 because, if they were saying X and Mr. Bray said, "I
11 want you to say X," and he wasn't telling them to
12 lie, then what they said earlier, the implication is,
13 is that was the truth.

14 So why are they changing their testimony
15 today? It has been years after the fact. You can
16 understand, if you saw some of the letters, they
17 could easily get upset because it looks like Mr. Bray
18 was playing two sides of the coin, that he was having
19 an emotional relationship of some sort with two
20 different women. That can get you mad. And in fact,
21 Jessica even testified that she got jealous about
22 Danielle a little bit.

23 Danielle, in particular, also testified
24 that people had been coming to her and telling her
25 what she knew to be false things about Mr. Bray in

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1 order to influence her testimony. If you say bad
2 things about a person, you can eventually convince
3 them to say bad things about him as well. And I
4 think it's interesting that for years she has not
5 said anything, not corroborated with what the
6 Government asserts. And it's only when they keep
7 bringing her back and keep bringing her back multiple
8 times, shipping her in from Oklahoma so she can be
9 interrogated over and over again by the U.S. attorney
10 and by other law enforcement officials, they only
11 broke her down just a couple of days ago. She even,
12 according to them, lied to the U.S. attorney until
13 just two days ago -- well, two days before trial.
14 But it took until that long for them to finally get
15 what they thought they needed from Ms. Lamb.

16 All I want you to do -- you've listened to
17 a lot of evidence. You've got a lot of stuff to look
18 through. At times, the evidence has been tedious,
19 overdone in some regards. The Government has brought
20 in so much evidence because they want you to think
21 badly about Mr. Bray. We have looked at photographs
22 by police officers thinking that a good surveillance
23 place would be of a hotel. The Government hasn't
24 missed a stone, left a single stone unturned in
25 trying to convince you that something bad was going

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1 on. And you heard Mr. Bray. He voluntarily took the
2 stand, didn't have to, but it was so important to him
3 to tell you about the real relationship between
4 himself and these women. And we ask you to consider
5 all that carefully and consider the evidence,
6 consider what I think I pointed out as some of the
7 weaknesses in the Government's evidence, and ask you
8 to return verdicts of not guilty as to all the
9 counts.

10 MS. WALDRON: Ladies and gentlemen, what
11 the Government wants you to do is look at the
12 evidence. Look at it carefully, read the evidence.
13 What the Government wants you to do is not to find
14 that the defendant is a bad person, not to find that
15 the defendant is a crude person, not to find that the
16 defendant is evil. What the Government wants you to
17 do and what the evidence shows is that the defendant
18 is guilty of using these communications to entice or
19 attempt to entice these girls to engage in illegal
20 sexual intercourse. Now, we don't have to prove that
21 the sexual intercourse occurred, but the evidence
22 shows that that's what he wanted. And we don't have
23 to prove that the girls were persuaded. The evidence
24 shows that was his purpose.

25 You were not asked to leave your common

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1 sense at the door when you came in to serve as
2 jurors. You have all this evidence. You can look at
3 this evidence, and you know that the same person who
4 is writing Jessica Spivey letters in the fall that
5 were found on the defendant's computer where he talks
6 in graphic sexual language about her not having --
7 not having wanted to use a condom and later says --
8 and excuse me for, again, using the defendant's
9 words -- "You don't bitch when the man you supposedly
10 love has his dick in you" -- the evidence shows that
11 the same man who wrote that and other communications
12 found on his computer with creation dates consistent
13 with Jessica's testimony was writing her those
14 instant messages, those e-mails in January, February.

15 And you can look through this binder, and
16 you can see the way this e-mail account was used.
17 And you can see the e-mails to the defendant's
18 daughters from Dickyfus talking about the things that
19 a father talks about with his daughters, including
20 the things a divorced father talks about, such as,
21 "Where has your mother been for the past 14 years?
22 Call me. It's daddy," basic things a father talks
23 about with his daughters. You will see that.

24 The defendant used Dickyfus as a screen
25 name. The defendant used other screen names. He

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1 used the support@amerinfoserve. He used AISBA. He
2 used AISharley. But mostly, for those instant
3 messages and those e-mails in that January, February
4 time period, he used the Dickyfus screen name. If
5 you don't already know that, from using your common
6 sense to review these communications and seeing
7 things like letters he admitted writing where he uses
8 the names Max, Alex, et cetera, nicknames, Precious,
9 Princess, ways of signing off, "truly, madly,
10 deeply," used, also, in the e-mails from Dickyfus.
11 Phrases, even for sexual things such as "backed up,"
12 he used in the e-mails and the IMs and then later in
13 a letter he admits writing to Danielle.

14 All of these things we have discussed, such
15 as all these documents and pictures and e-mails found
16 even on his own computer and all the common sense
17 inferences that you can make reviewing the evidence,
18 reviewing these screen shots, seeing the talk about
19 court, seeing her in court today, hearing Jessica's
20 testimony. You see the IM, February 6th: "Let's
21 meet up, briefly." She testified they met up at Toys
22 R Us. Then you see the instant message later that
23 night: "It was good to see you even though it was
24 only a few minutes." Who showed up? The defendant
25 showed up, the defendant who has been using the

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1 Dickyfus account.

2 But ladies and gentlemen, you have more
3 than just that. And this does take connecting the
4 dots on what those experts told you and what other
5 witnesses told you. Don Cokely, he told you a few
6 very important things. Don Cokely from AOL told you,
7 first, only one screen name in a given account can be
8 online at any time. So if you know that an account
9 is being used, you know that only one screen name is
10 on so that someone else on some other computer, some
11 other fantasy imposter, can't be using that. And you
12 can look at Exhibit AOL2A, and you have detailed
13 account information for Mr. Bray's AOL account,
14 master screen name, AISBA. You can see, ladies and
15 gentlemen, which screen name was using AOL at any
16 given time.

17 And you will see, when you look at the
18 other evidence in the case, that these screen names
19 are being used at exactly the same time as the
20 instant messages are being written to Jessica, as the
21 e-mails are being written to Jessica and Danielle.
22 You can see that. And then you will ask, "Well, how
23 do we know where this account is being accessed from?
24 How do we know that?" Well, first of all, ladies and
25 gentlemen, we know what one of the AOL access numbers

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1 was in Charlottesville, Virginia, in that time
2 period. You have exhibits, such as A16, showing
3 Jessica dialing up. Don Cokely testified about that.
4 We know the AOL access numbers. We also know, from
5 Detective Dean, what AOL access numbers were being
6 used by the defendant's computer, Exhibit 35, one of
7 those numbers, 297-0358.

8 And as we connect the dots further, we
9 heard Mr. Meta. He came in and testified about the
10 hotel records from the Super 8 that the defendant was
11 staying at. The defendant was staying there February
12 13, 14, 15 before he meets Jessica Spivey there,
13 before sexual intercourse, after these
14 communications. When you look at these hotel
15 records, you will see consistent, exactly matching --
16 in fact, the hotel records are about five minutes
17 fast. AOL were the ones that were so careful with
18 their time. Mr. Cokely explained how important it is
19 for them to have their time exactly on.

20 You will see that when Dickyfus is online,
21 when that account and no other account held by
22 Mr. Bray, therefore, is online, the Super 8 Motel
23 phone in the defendant's room is being used. You
24 will see that. You will see 376 minutes on the 14th
25 of February, 2002. Was some imposter, Danielle

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1 perhaps, in there for 376 minutes on the 14th of
2 February? You look at the AOL records. Well, yes,
3 22:19, on the 14th of February, Dickyfus, that
4 account was used for that same time period. And you
5 see the call to the AOL access number from the
6 defendant's hotel room.

7 And the only thing that's a little tricky
8 about connecting these dots is what Mr. Meta
9 explained was the night audit, how the date doesn't
10 change until after the night audit. This particular
11 time, though, it doesn't involve that, doesn't span a
12 night audit, is not confusing to see that date,
13 2-14-02, 22:14, 146 minutes.

14 And by the way, ladies and gentlemen,
15 that's also when evidence from the Spiveys' computer,
16 these screen shots, show the defendant and Jessica
17 having an instant messaging session. First, you see
18 Jessica looking for Dickyfus. That's at 10:10 p.m.
19 Well, we know, from the AOL records, that he wasn't
20 on yet. He didn't get on until 10:19 p.m. And so
21 you see, in Exhibit T1, she's looking for him and T2,
22 "Member is not currently signed on." But within ten
23 minutes, he is on; Dickyfus is on. And then they're
24 chatting, and they're using these communications, and
25 the defendant is using these communications to entice

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1 her to engage in sexual activity. From his hotel
2 room, on his America Online account, he's saying
3 things like T135: "You'll sleep good tomorrow with
4 part of me deep in your belly."

5 Ladies and gentlemen, when you apply your
6 common sense to the overwhelming evidence in this
7 case, the defendant is using a Dickyfus account. And
8 you cannot read these communications without it being
9 clear that he is using these communications to induce
10 Jessica to engage in sexual intercourse or attempting
11 to do so because, again, we do not need to prove that
12 it actually occurred.

13 And that's even more important when we're
14 talking about Danielle. Defense made a lot about the
15 written word, defendant's need to express himself
16 from jail. Well, first of all, you know he was
17 writing these things way back in the fall before he
18 was in jail. That's the way he talked to minors
19 then. That's the way he talked to Jessica Spivey.
20 You know that, ladies and gentlemen. And the
21 defendant tries to put this on jail. Well, the fact
22 is, that's not even an excuse even if it was why he
23 was communicating this way. That's irrelevant.

24 And perhaps he's not saying exactly, "I
25 will have sex with you on August 14 at 2200 hours."

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1 No, it would have been, in fact, easier for you to
2 review the evidence if he had used words such as
3 that. Instead, he's writing, such as Exhibit 56, and
4 that's way back in March when he thinks he's getting
5 out soon, as you recall from these letters and phone
6 calls: "I'm getting out soon." He's writing, in
7 addition to -- talked about being devious, how she
8 needs to be so careful with the mail. "From the
9 moment I felt your loving heart beat close to
10 mine" -- and I'll just abridge this about her hot,
11 thick tongue sliding into his mouth -- "the first
12 time I licked your succulent, luscious flower, the
13 first time I felt your strong legs around me, the
14 first time I felt you tightening around my love, my
15 world changed forever."

16 And with Danielle here, in this letter that
17 he admitted writing, he has a variation of "truly,
18 madly, deeply," with Danielle: "Unconditionally,
19 passionately, tenderly, until the end of time."

20 Ladies and gentlemen, you don't even need
21 the testimony of Jessica and Danielle to find that
22 the defendant beyond a reasonable doubt was using
23 these communications to entice or attempting to
24 entice these girls to engage in sexual intercourse
25 because, make no mistake, with Danielle, in a

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1 slightly different way from Jessica, he's laying the
2 groundwork because he wants her there for sexual
3 intercourse when he gets out of jail.

4 He always thinks that's going to be soon.

5 CD12, we played it for you at the beginning. He
6 starts the phone call off, which you heard in court,
7 that he'll be out in the next couple of weeks.

8 Remember, he says he has to be careful, using
9 expletives of course. But he says he has to be
10 careful what he says on the phone. But then he,
11 still, in his own very subtle way, talks about how he
12 could watch Danielle's big ankles up in the air,
13 talks about how she should have gotten more of his
14 good loving while she had the chance, and then later,
15 how she'd better remember that when he gets out.

16 Ladies and gentlemen, that both confirms
17 the past sexual activity and lays the groundwork for
18 future sexual activity, which the defendant --
19 although he has no definite date, he keeps thinking
20 it's going to be very soon. That's his intent.
21 That's what is important for these charges.

22 He intensifies the sexual contact, still
23 thinking he's going to get out soon. He writes the
24 birthday letter, ending it, "Get ready. I'm coming
25 home." And remember, in that phone call that was

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1 played in court, he talks about the birthday letter,
2 talks about how it's the best thing he has ever done.
3 He said another thing, too: (Audiotape played) "I
4 get stronger every day. When I walk out of here,
5 there ain't nothing going to stand between me and
6 you." (End of audiotape)

7 Ladies and gentlemen, he keeps thinking
8 he's getting out. In Exhibit 61, he writes a letter
9 to Danielle, April 17: "You are not supposed to be
10 jealous of Jessica. That's our deal. That's our
11 deal since day one. It has not changed until there's
12 a good reason to change it. I do love you. I love
13 her. I know that you're good to me, but she's good
14 to me, too. Danielle, I'm the judge of that baby,
15 not you. You're supposed to love me and wait for me,
16 no matter what. Quit bitching and do it. I'm
17 getting out in a couple of weeks and leaving Virginia
18 in a month. Better be sweet."

19 He wants both of them on the hook. He
20 wants to persuade and entice both of them. Whether
21 he does actually succeed or not, he is guilty. He's
22 guilty of persuading or attempting to persuade these
23 girls, using U.S. Mail, the internet, the phone,
24 persuading and attempting to persuade them to have
25 sex.

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1 I'm not going to talk to you about this for
2 much more. You have the evidence. I just want to
3 highlight a couple of things about the drug charges.
4 Yes, for the 15th, one of things that you have to
5 rely on is Jessica's testimony. But you also have
6 the drugs actually seized from his house. And you
7 also have testimony that in the fall, in the football
8 games -- and whether the season lasted longer or not,
9 you know it wasn't after November 10th because he
10 testified that he got locked up then. So you know
11 that he was giving Jessica pot.

12 He is not charged, ladies and gentlemen,
13 with being a drug dealer. The Government is not
14 attempting to prove some status of his being a drug
15 dealer. He is charged with distributing marijuana on
16 or about a certain date, and we have proven that.
17 And he is charged with possessing marijuana with the
18 intent to distribute on another date, and we have
19 proven that.

20 For the enticement charges, which you have
21 heard a lot more about, you have all this evidence.
22 And when you review that evidence, you will see it's
23 not the words of Jessica and Danielle, ultimately,
24 that you have to rely on. You could disregard their
25 words. You could ignore them entirely if you chose

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1 to because you have the defendant's words. It's the
2 defendant's own words that show that he is guilty of
3 using mail, using the internet, using the telephone,
4 using these things to persuade or induce these girls
5 to engage in sexual intercourse or to attempt to do
6 so. That's the intent.

7 Ladies and gentlemen, this man had no
8 boundaries. There's nothing he wouldn't say to a
9 16-year-old girl. You'll see that in this evidence,
10 nothing he wouldn't say, nothing he wouldn't try to
11 accomplish in these communications, try to do to
12 these girls, do with these girls. He had no
13 boundaries. But the criminal laws set boundaries.
14 And people are not prosecuted for being a bad person.
15 They are prosecuted for going over those boundaries,
16 for taking affirmative steps, committing criminal
17 acts, going over those boundaries. And ladies and
18 gentlemen, you define, you judge the facts on those
19 boundaries. You do that based on the evidence. And
20 what the evidence shows beyond a reasonable doubt is
21 that the defendant, James Bray, is guilty of all the
22 counts with which he 's charged.

23 THE COURT: Members of the jury, in a few
24 minutes, you will go to the jury room to deliberate.
25 Any verdict must represent the judgment of each

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1 juror. In order to return a verdict, it is necessary
2 that each juror agree to that, too. In other words,
3 your verdict must be unanimous. It is your duty, as
4 jurors, to consult with one other, to deliberate in
5 an effort to reach agreement if you can do so without
6 violence to individual judgment.

7 Each of you must decide the case for
8 yourself but only after an impartial consideration of
9 the evidence in the case with your fellow jurors. In
10 the course of your deliberations, do not hesitate to
11 re-examine your own views and change your opinion if
12 convinced it's erroneous. But do not surrender your
13 honest conviction as to the weight or effect of the
14 evidence solely because of the opinion of your fellow
15 jurors or for the mere purpose of reaching a verdict.

16 Remember, at all times, you're not
17 partisans; you're judges of the facts. Your sole
18 interest is to seek the truth from the evidence in
19 the case.

20 Upon retiring to the jury room, you should,
21 first, select one of your number to act as your
22 foreperson, who will preside over your deliberations
23 and will be your spokesman here in court.

24 A form verdict has been prepared for your
25 convenience, and the verdict form is this: It has,

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1 actually, four separate counts, and you vote guilty
2 or not guilty on counts 1 or 2. They're the choices,
3 either guilty or not guilty, as to counts one and
4 two. As to counts six and seven, there are actually
5 three possible verdicts. You may, of course, find
6 the defendant not guilty. You may find the defendant
7 guilty of distribution and possession with intent to
8 distribute, or you may find that the defendant simply
9 possessed marijuana and that the Government has not
10 proven beyond a reasonable doubt that he possessed it
11 with intent to distribute.

12 Whatever your verdicts are, the foreperson
13 should check the form, whether you find the defendant
14 guilty or not guilty or the verdict of guilty of some
15 lesser offense. Your foreperson should sign the
16 verdict, print his or her name, and date the verdict
17 and knock on the door and tell the marshall that
18 you've arrived at a verdict.

19 It's past 11 o'clock. I would suggest that
20 you get in there and decide if you're going to be
21 long enough that you want lunch. We can send the
22 menu and lunch can be brought to you. If you all
23 want to, you could suspend and go to lunch. I'll
24 leave that up to you. After awhile, we'll see where
25 you are. Let the marshall let me know. If you order

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1 lunch, it takes about an hour before it can be
2 brought to you. It's usually that long.

3 There's one other thing we have to do.
4 Unfortunately, one of the jurors is out due to
5 illness. We do have alternates, two alternates.
6 Fortunately, a second person didn't get sick. What
7 we do now is select an alternate whose name will be
8 drawn so that we have 12 people on the jury.

9 I'll ask the clerk to select a name.

10 THE CLERK: Yes, Your Honor. It will be
11 juror number 11, Jennifer Anna Pendleton.

12 THE COURT: Just remain there.

13 All right. The other members of the jury
14 may retire to the jury room to deliberate. You'll
15 have with you in the jury room the instructions I
16 read to you, the form verdict, all the exhibits
17 admitted into evidence. We may not bring them all to
18 you. Some of the things -- if you need to listen to
19 something, obviously, the equipment will not be with
20 you. You may have to be brought back into the
21 courtroom to hear certain things. But anything that
22 you want in the way of exhibits, anything admitted
23 into evidence, just ask for it.

24 You may now retire to the jury room.

25 (Jury left the courtroom at 11:19 a.m.)

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1 THE COURT: All right. You are the
2 alternate juror, and I have to instruct you not to
3 discuss the case with anyone, still. Until you know
4 that this case is over, when you hear that the jury
5 has reached a verdict, you may not discuss the case
6 with anyone else. But something could happen. If
7 another juror would get sick, we would need to call
8 you back in and they would have to begin, deliberate
9 again from the beginning with you being present.

10 You're still technically available for
11 recall until this verdict has been reached. So do we
12 know where we can reach you for the rest of the day?

13 THE JUROR: I have a cell phone number.

14 THE COURT: Take her number. What is the
15 number?

16 THE JUROR: 960-0246.

17 THE CLERK: Did you say 960-0246?

18 THE JUROR: (Nodded head in the
19 affirmative.)

20 THE COURT: You're excused now. Thank you.
21 Sorry you had to be here all week and not participate
22 further. That's the way it works.

23 Okay. I have the instructions right here
24 and the verdict form. I'm going to send those in.

25 I would ask counsel to go over all of this

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1 to make sure that no exhibits go back to the jury
2 room, except those that have been admitted into
3 evidence.

4 MS. WALDRON: Yes, sir.

5 THE COURT: Court will be in recess until
6 the jury returns.

7 (Recess, 11:21 a.m. to 11:45 a.m.)

8 THE COURT: All right. The jury has a
9 question, two questions. First, what is the minimum
10 weight of distribution that is illegal of marijuana?
11 Secondly, is the large stack of CDs, generally,
12 Exhibit 21, all admitted?

13 What I would propose is that I would answer
14 the first question, no amount of marijuana may be
15 legal, possessed or distributed. The Government must
16 prove beyond a reasonable doubt that there was a
17 detectable amount.

18 MR. WILDER: I believe that's an accurate
19 statement of the law, Your Honor.

20 MS. WALDRON: Yes, the Government agrees,
21 Your Honor.

22 THE COURT: Was all of 21 admitted?

23 MS. WALDRON: No, Your Honor. 21 was not
24 admitted, the stack was not.

25 MS. HUDSON: Your Honor, if I may, I don't

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1 know if the Court wanted to make any further
2 explanation, but Sergeant Sandridge identified that
3 as the collective body of calls from the jail, from
4 which these specific phone calls were duplicates,
5 that were introduced in single form. And that's what
6 was marked for identification.

7 THE COURT: So I'll tell them that the
8 large stack of CDs was not admitted, only portions
9 from them.

10 MS. HUDSON: And for the record, Your
11 Honor, the CD, for instance, that was played during
12 cross-examination was a portion from a CD that was
13 solely used for impeachment evidence. But those
14 earlier CDs from the Government's case in chief were
15 admitted as single exhibits.

16 MR. WILDER: That's accurate, Your Honor,
17 only those that were specific -- those specific
18 subsets that were specifically admitted during the
19 Government's case.

20 THE COURT: Would all of the portions
21 played in court be admitted?

22 MS. HUDSON: With the exception of the
23 impeachment, yes, sir.

24 Is that --

25 MR. WILDER: I think that's correct.

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1 MS. HUDSON: And I can identify them by
2 number if that would make it more clear, Your Honor.

3 THE COURT: All right.

4 MS. HUDSON: Government's Exhibits CD2,
5 CD9, CD12, and CD13 were the four telephone calls
6 played during the Government's case in chief, three
7 through Sergeant Sandridge and one, CD9, played
8 during Danielle Lamb's testimony. Those were all
9 admitted and were subsets of Number 21. The
10 portion -- and I guess -- the portion of the
11 telephone call that was played to impeach Mr. Bray
12 was played solely for that purpose and was admitted
13 as impeachment evidence but not -- the tape itself is
14 not admitted as evidence, Your Honor.

15 THE COURT: I see. Only the portions
16 played in court and a separate one played during
17 defendant's cross-examination is in. CDs 2, 9, 12
18 and 13 were the ones played in court. Does that
19 work?

20 Okay. I am going to send this back. Take
21 that to the foreman. Court will be in recess.

22 (Recess, 11:53 a.m. to 12:53 p.m.)

23 THE COURT: The jury has a question: "Can
24 we consider the phone call between Mr. Bray and his
25 mother concerning Mr. Bray's usage of pot as

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1 evidence? The conversation was on the CD used in
2 prosecution's cross-examination. Signed, Foreperson
3 Dawn Marie Ballinger."

4 "Can we use the court record from the
5 stenographer?" That's the second question.

6 MR. WILDER: Your Honor, I think on the
7 first part of the question, they are entitled to
8 consider that portion of the recording that is
9 offered simply as inconsistent statements made by the
10 defendant. And I think we have an instruction that
11 refers to that.

12 THE COURT: I'll re-read the question:
13 "Can we consider the phone call between Mr. Bray and
14 his mother concerning Mr. Bray's usage of pot as
15 evidence? The conversation was on the CD used by the
16 prosecution during cross-examination."

17 MS. HUDSON: Your Honor, the Government's
18 view would be that the jury could be instructed that
19 they can consider it for the purpose for which it was
20 offered, impeachment of Mr. Bray's testimony.

21 THE COURT: There is an instruction: "If
22 you believe from the evidence that the defendant
23 previously made a statement inconsistent with his
24 testimony at this trial, that previous statement may
25 be considered by you as proof that what the defendant

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1 previously said is true." That's the instruction.

2 MS. HUDSON: We think that's a correct
3 statement of the law, Your Honor.

4 MS. WALDRON: Could we look at that
5 particular instruction, Your Honor?

6 MR. WILDER: I think it's number eight.

7 THE COURT: What are you looking for?

8 MS. WALDRON: Your Honor, I'm looking for
9 the rules, just trying to --

10 THE COURT: What's the problem? It seems
11 to me -- I mean, we agreed on the answer to this
12 question.

13 MS. WALDRON: My only concern is that I
14 believe the answer suggested by defense counsel
15 differs slightly from the instruction in that one
16 would consider it as impeachment and one would
17 consider it as substantive evidence of the crime. I
18 just wanted to make sure that the rules allow it to
19 be considered when it's inconsistent, allows it to be
20 considered as substantive evidence.

21 THE COURT: Well, the instruction, I think,
22 says that.

23 MR. WILDER: And if Your Honor wants, it
24 may be easier just to refer them back to instruction
25 number eight with nothing else.

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1 THE COURT: All right. Okay. Call the
2 jury back. I need to tell them about this court
3 record.

4 (Jury entered the courtroom at 12:59 p.m.)

5 THE COURT: Members of the jury, I called
6 you back in because of your question being a little
7 more complicated, rather than trying to write an
8 answer. But your question was: "Can we consider the
9 phone call between Mr. Bray and his mother concerning
10 Mr. Bray's usage of pot as evidence? The
11 conversation was on the CD used by the prosecution in
12 cross-examination."

13 I'm going to refer you, when you go back to
14 the jury room, to instruction eight. It will tell
15 you -- at this point, that sequence was played to
16 you, the prosecutor said, to impeach Mr. Bray's
17 testimony. They offered it as impeachment evidence.
18 Instruction eight tells you, "If you believe from the
19 evidence that the defendant previously made a
20 statement inconsistent with his testimony at this
21 trial, that previous statement may be considered by
22 you as proof that what the defendant previously said
23 is true." And that's instruction eight.

24 Now, the defendant is different from
25 another witness. If some other witness were

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1 impeached at trial, you may not consider what the
2 other witness, who is not a party to the case, might
3 have said as being true. You can only consider what
4 is said in the courtroom by an ordinary witness. But
5 when you have a party to the case, be it the
6 defendant or the plaintiff in a civil case, what a
7 party has said at a previous time, if proven, may be
8 taken by you as true. And that is what instruction
9 eight will tell you. Now, I have not changed these
10 instructions by any stretch. What I've told you in
11 the written instructions is what applies to this
12 case.

13 Now, with regard to, "Can we use court
14 records from the stenographer," what is it that you
15 need? I mean, you might have seen here that we've
16 had three court reporters. And all of these things
17 are on -- they're not really readily accessible. The
18 court reporter's notes -- I know that, from the O. J.
19 Simpson trial, it looks like these things are
20 supposed to be available. They're not. The notes
21 are not taken down for the jury. What the jury is
22 supposed to do is remember -- I know you don't
23 remember everything. It's your collective memory
24 that counts at this point. It would be very
25 difficult to retrieve any information that the Court

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1 could give you at this point. That's about all I can
2 tell you. So I'm going to ask you to return --

3 THE FOREPERSON: Your Honor?

4 THE COURT: Yes.

5 THE FOREPERSON: We'd like to know if we
6 are able to get the collection of Jessica Spivey's
7 recollection during her testimony. Is there any way
8 that we can get, I guess, the typed --

9 THE COURT: That's what I was saying. It's
10 not available.

11 THE FOREPERSON: Okay.

12 THE COURT: You may retire.

13 (Jury left the courtroom at 1:03 p.m.)

14 THE COURT: Court is in recess, again.

15 (Recess, 1:03 p.m. to 1:59 p.m.)

16 THE COURT: Ready to call the jury?

17 MS. WALDRON: Yes, Your Honor.

18 MR. WILDER: Yes, Your Honor.

19 (Jury entered the courtroom at 2:00 p.m.)

20 THE COURT: Members of the jury, have you
21 agreed upon a verdict?

22 THE JURY: Yes.

23 THE COURT: Hand your verdict to the
24 marshall.

25 All right. You have put your name in the

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1 blank where you intended to indicate the verdict; is
2 that correct?

3 THE FOREPERSON: Yes, sir.

4 THE COURT: If you'd like to see it, you
5 can. Rather than checking the verdict, the jury
6 foreperson put her name and date in the blank.

7 MR. WILDER: That's fine, Your Honor.

8 THE COURT: All right. I'll ask the clerk
9 to read the verdict.

10 THE CLERK: In the Criminal Action
11 3:02-CR-00106, the United States of America versus
12 James Bray, we, the jury, find the defendant, James
13 Daniel Bray, referred to hereafter as defendant, as
14 follows: In count one, from on or about July 28,
15 2001 to on or about March 29, 2002, in the Western
16 District of Virginia, defendant did use the mail or
17 any facility or means of interstate commerce to
18 knowingly persuade, induce, entice, or coerce or
19 attempt to persuade, induce, entice, or coerce an
20 individual, Jessica Spivey, who had not yet attained
21 the age of 18 years, to engage in sexual activity;
22 for which any person can be charged with a criminal
23 offense, namely, Virginia Statute, Section 18.2-371,
24 all in violation of United States Code, Section --
25 Title 18 -- excuse me -- United States Code, Section

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1 2422(b), guilty.

2 Count two, from on or about January 13,
3 2002 to on or about November 5, 2002, in the Western
4 District of Virginia, the defendant did use the mail
5 or any facility or means of interstate commerce to
6 knowingly persuade, induce, entice, or coerce or
7 attempt to persuade, induce, entice, or coerce an
8 individual, Danielle Lamb, who had not yet attained
9 the age of 18 years, to engage in sexual activity,
10 for which any person can be charged with a criminal
11 offense, namely, Virginia Statute, Section 18.2-371,
12 all in violation of Title 18, United States Code,
13 Section 2422(b), guilty.

14 Count 6, on or about November 10, 2001, in
15 the Western District of Virginia, the defendant
16 knowingly and intentionally distributed or possessed
17 with the intent to distribute a mixture of substance
18 containing a detectable amount of marijuana, a
19 Schedule I narcotic controlled substance, all in
20 violation of Title 21, United States Code, Section
21 841(a)(1), not guilty.

22 Count 7, on or about February 15, 2002, in
23 the Western District of Virginia, the defendant
24 knowingly and intentionally possessed, with the
25 intent to distribute, a mixture of substance

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1 Page 71
2 containing a detectable amount of marijuana, Schedule
3 I narcotic controlled substance, all in violation of
4 Title 21, United States Code, Section 841(a)(1),
5 guilty. Foreperson, Dawn Marie Ballinger, April 16,
6 2004.

7 Ladies and gentlemen, do you and each of
8 you agree upon this verdict, so say you all?

9 THE JURY: Yes.

10 THE COURT: Any motion to discharge?

11 MS. WALDRON: No, Your Honor.

12 MR. WILDER: No motion, Your Honor.

13 THE COURT: Members of the jury, thank you
14 for your service in this case. It's been a long,
15 long week. You've given a great deal. I appreciate
16 it very much. We thank you. You may be excused at
17 this time.

18 (Jury left the courtroom at 2:05 p.m.)

19 THE COURT: Any dates available for
sentencing?

20 THE CLERK: Yes, Your Honor, several.

21 THE COURT: What's the first one?

22 THE CLERK: July 2nd at 10:30 or 11.

23 MS. HUDSON: Did you say the 2nd or the
24 10th? I'm sorry.

25 THE CLERK: 2nd.

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1 MR. WILDER: That suits, Your Honor.

2 MS. WALDRON: Yes, sir.

3 MS. HUDSON: That's fine, Your Honor.

4 THE COURT: The trials on the other counts,
5 have they been set?

6 MS. HUDSON: They have not been set yet,
7 Your Honor.

8 THE COURT: Let's see if we can get those
9 set.

10 MS. HUDSON: Thank you. We'll do that.

11 THE COURT: The Court will enter judgment
12 on the verdicts. Thank you all very much. I
13 appreciate it. The United States District Court
14 stands in adjournment.

15 (Whereupon, the proceedings concluded at
16 2:06 p.m.)

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1 CERTIFICATE OF COURT REPORTER

2

3 I, Jennifer L. Ziegenfuss, CCR, do hereby
4 certify that I recorded verbatim the proceedings in
5 the United States District Court for the Western
6 District of Virginia, Charlottesville Division, in
7 the captioned cause, heard by The Honorable Norman K.
8 Moon, Judge of said court, on April 16, 2004.

9 I further certify that the foregoing pages,
10 numbering 1 through 72 inclusive, constitute a true,
11 accurate, and complete transcript of said
12 proceedings.

13 Given under my hand this 27th day of August,
14 2004.

15

16

17

18

Jennifer L. Ziegenfuss

19 Jennifer L. Ziegenfuss, CCR

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